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Richard J. Sterner
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In re Application of
ASGHAR, Aziz *et al*
Application No.: 09/381,055
PCT No.: PCT/SE99/00702
Int. Filing Date: 28 April 1999
Priority Date: 28 April 1998
Attorney's Docket No.: 1103326-0590
For: NOVEL USE

DECISION ON
RENEWED PETITION
UNDER 37 CFR 1.181

The decision is in response to applicants' "Renewed Petition Under 37 CFR § 1.181(a) to Withdraw Holding of Abandonment" ("Ren.Pet.") filed on 09 April 2001.

BACKGROUND

On 09 February ~~1999~~²⁰⁰⁰, a decision dismissing applicants' petition to withdraw the holding of abandonment was mailed. A review of financial records for counsel's Deposit Account confirmed that it contained insufficient funds to pay the full U.S. basic national fee when an attempt to charge this fee was made on 17 September 1999.

On 09 April 2001, applicants submitted the instant renewed petition which included, *inter alia*, a copy of a facsimile of counsel's Deposit Account statement dated 30 July 1999 and sent by the USPTO Deposit Account Branch on 15 September 1999; a copy of the 30 July 1999 Deposit Account statement purportedly received by counsel on 25 October 1999; a copy of the envelope allegedly containing the statement postmarked 22 October 1999; a copy of check No. 181323 and check No. 181321 dated 16 September 1999; a copy of a "Certificate of Express Mail" and a transmittal letter dated 16 September 1999; and a copy of the return receipt postcard for documents submitted 16 September 1999.

DISCUSSION

Delay in Posting Funds

In the renewed petition, applicants contend that sufficient funds were mailed using Express Mail on 16 September 1999, but were not posted until 20 September 1999. Ren.Pet. ¶ 7. Applicants argue that they "properly complied with the rules pertaining deposit accounts and should not be penalized for the delay in time between receipt by the PTO of the remitted funds and the posting of the funds to their account.

Id. at ¶ 8. Applicants included a copy of the postcard receipt showing a date of mailing of the aforementioned checks of 16 September 1999.

The postcard receipt was not date stamped, nor should it have been. Deposit accounts are for the convenience of attorneys and the general public in paying any Office fees due. 37 CFR 1.25(a). Furthermore, an amount sufficient to cover all fees requested must always be on deposit. Id. Therefore, it is the applicants responsibility that sufficient funds are contained in the Deposit Account to meet current obligations. Moreover, the date of posting of funds will not be amended unless the posting does not occur for a reason beyond applicants' control, or the posting of the funds occurs at a date well outside normal business practices. That is not what occurred in this situation.

Applicants mailed the checks on 16 September 1999 and the funds were posted into Deposit Account No. 23-1703 on 20 September 1999. This time period is well within normal business practices. Therefore, the date of posting will not be changed.

Monthly Deposit Account Statement Not Timely

Applicants also claim that their monthly Deposit Account statement for July 1999 was not received until 25 October 1999, and that they would have been unaware that more funds were required without receiving a facsimile of the aforementioned statement on 15 September 1999 after a telephone request was made. Id. at ¶ 5. Applicants state that they were "at the mercy" of the Office to comply with the requirements of 37 CFR 1.25 since internet access to the status of their Deposit Account was not available. Id. at ¶ 4. Applicants contend that providing "timely deposit account statements" by the Office "must precede Applicants obligations," and that it is their own "reliance on this fulfillment that led to the present situation in the first place." Id. at ¶ 9.

This argument has also been considered and rejected. The monthly deposit statement listed in 37 CFR 1.25 is a courtesy provided to applicants to ensure that proper funding has been credited, or charged by the Office. Failure to provide this statement does not relieve applicants of any responsibility in ensuring sufficient funds are available to meet applicants' requirements. Moreover, the monthly Deposit Account statement is not a condition precedent to any obligation by applicants to meet their financial obligations. Any delay by applicants in depositing funds in their Deposit Account prior to receiving a monthly statement was misguided, and not a sufficient basis for the Office to withdraw the holding of abandonment.


CONCLUSION

For the reasons above, the renewed petition to withdraw the holding of abandonment is **DISMISSED** without prejudice.

The above-captioned remains **ABANDONED**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." Applicants could also file a petition to revive the above-captioned application pursuant to 37 CFR 1.137(a) or 1.137(b).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.


James Thomson
Attorney Advisor
Pct Legal Office

Tel.: (703) 308-6457